



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

On March 6, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On March 24, 2022, this Application was set down to be heard on October 3, 2022 at 1:30 PM.

Both Tenants attended the hearing; however, neither Respondent attended at any point during the 22-minute teleconference. At the outset of the hearing, I informed the Tenants that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, they provided a solemn affirmation.

Tenant P.S. advised that a separate Notice of Hearing and evidence package was served to each Respondent on March 27, 2022, by registered mail (the registered mail tracking numbers are noted on the first page of this Decision). She testified that the first package was sent to Respondent N.G., who was the agent for the owner of the rental unit, and this was mailed to the service address that was provided on the tenancy agreement. As well, she stated that according to the tracking history, this package was delivered on March 30, 2022.

Furthermore, she advised that the second Notice of Hearing and evidence package was sent to Respondent T.V., who was the owner of the rental unit, and this was mailed to the rental unit. She stated that this was done because they did not have a service address for the owner, and this person collected their own mail at the rental unit throughout the tenancy. She submitted that this package was returned to sender. While they did not conduct a Land Title Search to corroborate that this person was the owner of the rental unit, she testified that this person introduced themselves as the owner throughout the tenancy, and returned one of the deposits to them on February 8, 2022,

by e-transfer after the tenancy ended. They submitted documentary evidence to support this position.

When reviewing these submissions, I accept that N.G. acted as the agent for the owner of the rental unit, as indicated on the tenancy agreement. As such, I am satisfied that this person was a Landlord, by definition of the *Act*, and was accurately named as a Respondent in this proceeding. Moreover, based on the undisputed evidence of service, I am satisfied that N.G. was duly served the Notice of Hearing and evidence package. As a result, I have accepted the Tenants' evidence and will consider it when rendering this Decision. Given that this package was duly served to N.G., this person could have attended the hearing at any time to provide insight into her role in this tenancy.

Regarding service to the person they believed to be the owner of the rental unit, despite them not providing a Land Title Search, or any other documentation, to corroborate this submission, I accept that this person was more likely than not the owner of the rental unit. However, the Tenants have submitted no documentary evidence to demonstrate that this person moved into the rental unit, so it is not clear to me why they would have served this package to that address as there is no guarantee that this person would have ever received this package. To ensure proper service, the Tenants could have conducted a Land Title Search, served the package to the address of the owner, and then submitted this documentary evidence to demonstrate sufficient service to this person. Given that this was not done, and given that the package was returned to sender, I am not satisfied that T.V. has been duly served the Notice of Hearing and Evidence package.

As a note, T.V. will still appear on the Style of Cause on the first page of this Decision. However, should any Monetary Order be granted to the Tenants, as T.V. was not sufficiently served, any award will be in the name of N.G. and will be enforceable on this person solely.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the tenancy started on February 1, 2021; however, the tenancy ended when they provided their written notice on January 4, 2022, to end their tenancy on February 1, 2022. While the tenancy appears as if it may not have ended in accordance with the *Act*, this was not the matter at hand. Regardless, rent was established at an amount of \$2,750.00 per month and was due on the first day of each month. A security deposit of \$1,375.00 and a pet damage deposit of \$1,375.00 were also paid. A copy of the tenancy agreement was submitted as documentary evidence for consideration.

P.S. advised that they provided their forwarding address in writing to N.G. by hand on January 31, 2022. Tenant E.S. testified that he witnessed this service when the move-out inspection report was conducted. They submitted a copy of the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form as documentary evidence.

They stated that N.G. sent them a "Security Deposit Settlement" where only one of their deposits would be returned; however, they confirmed that they never provided their written consent for any of their deposits to be withheld. They testified that T.V. e-transferred only one of their deposits back to them on February 8, 2022. They submitted documentary evidence to support this position.

As the Landlords have not complied and dealt with the deposits in accordance with the *Act*, they are requesting double the amount of the security deposit of \$1,375.00 X 2 = **\$2,750.00.**

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

As noted above, as I am satisfied that N.G. acted as an agent for the owner and thus met the definition of Landlord under the *Act*, I find that this person would be responsible for ensuring that the deposits are dealt with in accordance with the *Act*.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlords received the Tenants' forwarding address in writing on January 31, 2022. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlords must either return the deposits in full **or** make an Application to claim against the deposits. There is no provision in the *Act* which allows the Landlords to retain a portion of the deposits without the Tenants' written consent. However, it appears as T.V. did so by withholding one of the deposits without the Tenants' written consent.

As the Landlords had received the Tenants' forwarding address in writing, they had 15 days from the end of tenancy date of February 1, 2022, to either return the other deposit in full or make an Application through the Residential Tenancy Branch to keep that deposit. However, the Landlords took no action.

Based on the totality of the evidence before me, as the Tenants did not provide written authorization for the Landlords to keep any amount of the deposits, and as the Landlords did not return the other deposit in full or make an Application to keep this amount within 15 days of February 1, 2022, I find that the Landlords did not comply with the requirements of Section 38 and they illegally withheld one of the deposits contrary to the *Act*. Therefore, I am satisfied that the doubling provisions of this Section do apply in this instance.

Consequently, I am satisfied that the Tenants have substantiated a monetary award amounting to double the amount of one of the deposits. Under these provisions, I grant the Tenants a monetary award in the amount of **\$2,750.00**. As noted above, as only N.G. was sufficiently served the Notice of Hearing package, the Monetary Order will only be enforceable upon this person.

As the Tenants were successful in this claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenants**

Doubling of the security deposit	\$2,750.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$2,850.00</b>

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$2,850.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 4, 2022

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Residential Tenancy Branch